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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
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11 ROWDERICK P. WHITEHEAD, JR.,
12 Plaintiff,
13 vs.
14 SELENE RMOF REO ACQUISITION II,
15 LLC,
16 Defendant.

CASE NO. 10cv2034-WQH-JMA
ORDER

HAYES, Judge:

17 The matter before the Court is the Motion for Leave to Proceed in Forma Pauperis
18 (“Motion to Proceed IFP”). (ECF No. 2).

19 **BACKGROUND**

20 On September 29, 2010, Plaintiff Rowderick P. Whitehead, Jr., a nonprisoner
21 proceeding pro se, initiated this action by filing a Complaint and the Motion to Proceed IFP.
22 (ECF No. 1, 2).

23 **ANALYSIS**

24 *Motion to Proceed IFP*

25 All parties instituting any civil action, suit or proceeding in a district court of the United
26 States, except an application for writ of habeas corpus, must pay a filing fee of \$350. *See* 28
27 U.S.C. § 1914(a). An action may proceed despite a plaintiff’s failure to prepay the entire fee
28 only if the plaintiff is granted leave to proceed in forma pauperis pursuant to 28 U.S.C.
§ 1915(a). *See Rodriguez v. Cook*, 169 F.3d 1176, 1177 (9th Cir. 1999).

1 In an affidavit accompanying the Motion to Proceed IFP, Plaintiff states that he has not
 2 been employed since 2008, he has no bank accounts, and he owns no assets of value, such as
 3 real estate or a vehicle. Plaintiff states that his sole source of income is “gift from family \$600
 4 per month.” (ECF No. 2 at 2). The Court has reviewed Plaintiff’s affidavit and finds it is
 5 sufficient to show that Plaintiff is unable to pay the fees required to maintain this action. The
 6 Court grants the Motion to Proceed IFP pursuant to 28 U.S.C. § 1915(a).

7 *Initial Screening*

8 After granting IFP status, the Court must dismiss the case sua sponte if the case “fails
 9 to state a claim on which relief may be granted.” 28 U.S.C. § 1915(e)(2)(B); *see also Calhoun*
 10 *v. Stahl*, 254 F.3d 845, 845 (9th Cir. 2001).

11 The standard used to evaluate whether a complaint should be dismissed is a liberal one,
 12 particularly when the action has been filed pro se. *See Estelle v. Gamble*, 429 U.S. 97, 97
 13 (1976). However, even a “liberal interpretation ... may not supply elements of the claim that
 14 were not initially pled.” *Ivey v. Bd. of Regents of the Univ. of Alaska*, 673 F.2d 266, 268 (9th
 15 Cir. 1982); *see also Ghazali v. Moran*, 46 F.3d 52, 54 (9th Cir. 1995) (“[P]ro se litigants are
 16 bound by the rules of procedure.”). Federal Rule of Civil Procedure 8 provides that “[a]
 17 pleading that states a claim for relief must contain ... a short and plain statement of the claim
 18 showing that the pleader is entitled to relief....” Fed. R. Civ. P. 8(a). “[A] plaintiff’s obligation
 19 to provide the grounds of his entitlement to relief requires more than labels and conclusions,
 20 and a formulaic recitation of the elements of a cause of action will not do.” *Bell Atl. Corp. v.*
 21 *Twombly*, 550 U.S. 544, 555 (2007) (quotation omitted).

22 The Complaint alleges that this action “involves real property located at ... 40008
 23 Montage Lane, Murrieta, CA....” (ECF No. 1 at 1). The Complaint alleges that “[t]he Lenders
 24 dishonored/failed to give full disclosure pursuant to Regulation Z of the Truth-in-Lending
 25 Act,” in the course of a loan transaction. *Id.* at 3. Plaintiff seeks rescission and damages.

26 The allegations of the Complaint are insufficient to put Defendant on notice of the
 27 claims against it, as required by Rule 8 of the Federal Rules of Civil Procedure. The
 28 Complaint does not identify the date of the loan transaction, the parties to the transaction, or


1 how the “Lenders” failed to comply with the Truth in Lending Act. The Complaint repeatedly
2 references “rescission” and *Yamamoto v. Bank of New York*, 329 F.3d 1167 (9th Cir. 2003).
3 (ECF No. 1 at 4, 10, 12). As discussed in *Yamamoto*, in order to prevail on a rescission claim
4 pursuant to the Truth in Lending Act, a borrower is obligated to tender the property the
5 borrower received from the creditor under the loan. *See* 15 U.S.C. § 1635(b); 12 C.F.R.
6 §226.23(d); *see also Yamamoto*, 329 F.3d at 1171 (courts have the discretion to condition
7 rescission upon the satisfaction of the tender requirement). Plaintiff stated in his affidavit
8 submitted in support of the Motion for IFP that Plaintiff has no assets, savings, or income
9 beyond a monthly gift of \$600. The Complaint contains no allegations related to the tender
10 requirement.

11 The Court finds that the Complaint fails to state a claim on which relief can be granted
12 and must be dismissed.

13 CONCLUSION

14 IT IS HEREBY ORDERED that the Motion for Leave to Proceed in Formal Pauperis
15 is GRANTED. (ECF No. 2). The Complaint is DISMISSED without prejudice and the Clerk
16 of the Court shall close this case. No later than THIRTY (30) DAYS from the date of this
17 Order, Plaintiff may file an amended complaint, which shall be entitled, “First Amended
18 Complaint,” and which shall cure the deficiencies addressed in this Order. If Plaintiff does not
19 file an amended complaint within thirty days, this case shall remain closed without further
20 order of the Court.

21 DATED: November 16, 2010

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23 **WILLIAM Q. HAYES**
24 United States District Judge
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